



ASPECTS OF UKRAINIAN
LEGISLATION THROUGH THE PRISM
OF FOREIGN COMPANIES THAT PLAN
TO PARTICIPATE IN THE REBUILDING
OF UKRAINE

ALERT

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INTRODUCTION

Currently, Ukraine is fiercely defending its freedom and sovereignty both on the battlefield and on economic and social fronts. The war continues, but with faith in victory, **legislators in Ukraine are continuing to work on improving legislation. With a specific focus on urban planning with the understanding of the need to rebuild Ukraine in future.**

What changes should foreign companies be aware of if they are planning on participating in the rebuilding of Ukraine?

URBAN PLANNING REFORM

This refers to the extensive draft law No. 5655, which was adopted by the Verkhovna Rada of Ukraine in December 2022 and has been awaiting the signature of the President of Ukraine since then (https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72212).

The draft law has caused a lot of controversy within local government as well as broader society, due to the significant deprivation of controlling function of the authorities and the transfer of these functions to private hands. The initiators of the draft law refer to the need to eliminate corruption in the governmental bodies, while broader society activists believe that there is a lobby of large developers.

Among the main changes:

- the possibility of establishing land easements for underground parts of land is introduced. This will provide more opportunities for developers and is especially relevant considering the need to provide bomb shelters; and
- the power(s) of local authorities to issue permits for construction work have been significantly limited, which is aimed at eliminating corruption; and
- private companies will be empowered to carry out urban planning control. The initiators of the project thus realize the goal of eliminating corruption in the ranks of the authorized bodies; and
- in order to carry out their activities, authorized companies in the field of urban planning control must conclude a contract of civil liability insurance. The amounts are as follows:
 - 3 million euros for objects that, according to the class of consequences (liability), belong to objects with either medium (CC2); and
 - 5 million euros for objects with high (CC3) consequences.

This means that in case of an insured event, the insurance company will have to pay the specified amounts, but also indicates that access to the market will be open only to big players; and

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- the entire process from obtaining town planning conditions to putting the object into operation is to become digitized and transparent. For this, the Unified State Electronic System was created. Every citizen can see documents related to each object, and courts are obliged to indicate the registration number of the object in this system in their decisions.

Should be mentioned, that the text of the draft law has already been amended much since the first reading, and currently we have no understanding of the final version of the document, if signed by the President.

PUBLIC-PRIVATE PARTNERSHIPS (PPPs) IN UKRAINE

PPPs are widely used in Europe but are not in great demand in Ukraine. The legal basis for PPPs in Ukraine is the legislation "On Public-Private Partnerships". According to the current law:

- Foreign investors can participate in PPPs, but if they win the tender, they must start a legal entity (subsidiary) in Ukraine to conclude a cooperation agreement.
- There is free choice in respect of a dispute resolution mechanism (it can also be an international arbitration located abroad). There are other stated guarantees contained in the Law, which may reduce the concerns of foreign private partners about the need to establish a company in Ukraine in order to enter into a PPP agreement.

The PPP mechanism is well regulated and detailed in the Ukrainian legislation, but the shortcomings are the length of the procedure and bureaucratic obstacles.

Currently, this mechanism is also subject to reform. The PPP reform was presented in Lugano in July 2022 as part of the Ukraine Modernization Plan.

The key objective of the reform is to simplify the procedure and reduce the time required to prepare projects. The current status of this piece of legislation (draft law No. 7508 <https://itd.rada.gov.ua/billInfo/Bills/Card/39902>) is "adopted as a basis". It is expected to pass the 2nd reading, then be signed by the President and published.

We are following the process and expect the reformed legislation around PPPs to be introduced and to instill confidence in foreign investors looking to do business in Ukraine.

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MORATORIUM ON CROSS-BORDER TRANSFERS IN UKRAINE

On 24.02.2022, the National Bank of Ukraine introduced a moratorium on cross-border transfers while Martial Law is in place.

Ukrainian banks are prohibited from making cross-border transfers of funds from accounts in Ukraine to accounts of non-resident banks in Ukraine, both in hryvnia and in foreign currency, except in the way described in the Resolution.

In the context of payments for construction goods/services, it is worth noting that there is a List of Critical Imports (Resolution of the Cabinet of Ministers No. 153

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<https://zakon.rada.gov.ua/laws/show/153-2022-%D0%BF#n9>), which includes items that can be imported into Ukraine and are not subject to the moratorium, i.e. such goods/services can be paid for freely from Ukraine.

Thus, in order to safely deliver, for example, construction goods to Ukraine and receive payment for them, it is necessary to check whether the good(s) in question is on the authorized List of Critical Imports. The list is quite extensive, but it is still advisable to check and even confirm the information with the Customs Service. It must be noted that List is constantly being amended; during the ongoing war there have already been 30 amendments to the list.

Effective from 16.06.2023, said Resolution was amended in such a way that the restriction does not apply to the transfer of funds to fulfill debt obligations to a non-resident under a loan/borrowing/reimbursable financial aid if such a loan is granted with the participation of an MFI or with the participation of a foreign export credit agency (for example, KUKA) or a foreign state through an authorized person or bank (if the state is a shareholder of it).

On 20.06.2023, another amendment was made to expand the "window of opportunity" for cross-border transfers of funds from Ukraine.

In particular, the prohibition does not apply to cross-border money transfer transactions within the framework of fulfilling obligations under a loan received by a resident of Ukraine from a non-resident, while the following conditions are met:

- the loan is to be transferred to the resident's current account in a Ukrainian bank after June 20, 2023; and
- the amount of the currency transaction [except for the transfer of funds to repay the loan amount] does not exceed the value of payments at the maximum interest rate (12% per annum); and
- for a loan received by a resident borrower for a period not exceeding three years, the transfer of funds to fulfill obligations under the relevant agreement is carried out only at the expense of the borrower's own (not purchased and not obtained from a resident) funds in foreign currency; and
- for a loan received by a resident borrower with a loan period of more than three years, during the first three years from the date of receipt of the loan amount, the transfer of funds to repay the principal amount of the loan is carried out only at the expense of the borrower's own (not purchased and not obtained from the resident) funds in a foreign currency. The payment of interest, commissions, and fees under the relevant loan may also be made by the resident borrower at the expense of foreign currency purchased on his behalf.

The bank is responsible for monitoring compliance with the maximum payment amounts.

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CONCLUSION

In general, Ukraine has launched a large-scale process of legislative improvement aimed at simplifying and accelerating the processes required to restore damaged infrastructure facilities affected by the military aggression of the Russian federation. The amendments intend to increase economic stability, strengthen guarantees for business, improve transparency of all processes, and eliminate corruption.

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If you have any questions or need additional advice, please do not hesitate to contact WKB's Eastern Desk team.



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